Supreme Court, U.S.
FILED

No. 971926 MAY 29 1998

OFFICE OF THE CLERK

In the
SUPREME COURT OF THE UNITED STATES

October Term 1997

Roy F. Sutton, Petitioner

v.

The Estate of Roy C. Sutton, Co-Executor Loretta Sutton, Co-Executor Ronald Sutton; Beneficiaries Doreen Mc Neill , Bernedette Foley, Patricia Sutton, Robert Sutton; and Ronald Fogel, Joyce Fogel ; Respondents

---

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF NEW JERSEY

Roy F. Sutton
Petitioner
210 E. Upland Ave.
GALLOWAY TWP.,
NEW JERSEY
08201
609 652 8313

QUESTIONS PRESENTED

I. Whether State Court imposed contract terms, over property and associated rights; and also State Court imposed release, and satisfaction terms violate the Fourteenth Amendment?

II. Whether a valid, enforceable State Court judgment; subsequently denied enforcement or full faith and credit, may be imposed to deny subject matter jurisdiction in a Federal District Court?

III. Whether a State Court imposed release, entered without jurisdiction, may not be accorded full faith and credit so as to enable subject matter jurisdiction in a subsequent Federal suit ; and is the jurisdiction an excess or absence ?

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

Roy F. Sutton respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of New Jersey entered in this matter.

OPINIONS BELOW

The unreported ruling of the Superior Court of New Jersey, Probate part , dated 27 September 1996 is within Appendix at 1a. The unreported release/satisfaction order of the Superior Court of New Jersey, Probate part, dated 16 May 1997, is set forth in Appendix at 2a. The unreported affirming of of the Appellate Division is forth in Appendix at 3a. The unreported denial of Petition to the New Jersey Supreme Court, entered March 25, 1998, is within Appendix at 4a.

JURISDICTION

The New Jersey Supreme Court denied discretionary review on March 25, 1998 (App, 4a). The jurisdiction of this Court is predicated upon Title 28 U.S.C.A. 1257.

STATUTORY PROVISIONS INVOLVED

Article VI, Clause 2; Amendment IX; Amendment XIV; 18 U.S.C.A 242; 28 U.S.C.A. 1738, Para 3; 42 U.S.C.A. 1983; New Jersey Constitution , Article VI: Section III, part 2; Section II, Part 3; Section V , Part 3; New Jersey Court Rules: 1:1-2; 2:6-2; 2:9-1(a) and 2:10-5 are set forth in their entirety at (App 5a-7a).

STATEMENT OF THE CASE

Suit at bar emenates from a probate settlement , between petitioner and estate representatives. Ensuing settlement, consent decree, agreed to combine adjacent properties for sale as one parcel. Petitioner is a minority shareholder in estate related properties and owns a one sixth interest in the other property. Both properties front the same street and are of equal square footage. A building comprises two thirds of the

estate property. The 1988 consent decree set sale price at $650,000.00 which was subsequently lowered by consent to $575,000.00 in 1994.

In August of 1996, a purchase offfer for $300,000.00 was accepted by all parties ,except petitioner. Petitioner's rejection was based upon the terms of the earlier, longstanding consent decree. Upon application of the estate, Court mandatorialy enjoined petitioner to sign said sales agreement; or in the alternative, appointed a co-executor as petitioner's agent (1a). Said sale was eventually dropped to, approved for $225,000.00. Petitioner appealed on 11/6/96.

Subsequently in May of 1997 and upon application of of all parties to said sale, court determined and approved sums owing to petitioner out of said sale and also allowed the same to act as full satisfaction, release for all parties (2a). Said order was entered without jurisdiction, under New Jersey Court Rules. Affirmance was on Jan 23, 1998 (3a) with discretionary review denied on March 25, 1998 (4a).

How the federal claims were presented, raised: Initially , this Supreme Court shall find that both federal and state precedents, presented to and relied upon , by petitioner were ignored; and that neither the State Courts nor the respondents ever cited one legal authority for their rulings, positions.

The New Jersey Constitution parallels the U.S. Constitution . Fundamental property and liberty rights were raised, in support of petitoner's sale rejection, with cites to both Constitutions; and as applicable , citation to both federal and state legal authorities to substantiate, support sale rejection. All authorities were ignored.

Under Article VI, Section V, Part 3 of the New Jersey Consttution (6a), both The Supreme Court and the Appellate Division have original jurisdiction. Article VI, Section III, Part 2,(6a) again confers original jurisdiction to the Superior Court. The New Jersey Supreme Court's appellate Rule 2:10-5 again reiterates original jurisdiction. (7a). The New Jersey Supreme Court's appellate Rule 2:6-2 (and comments) (7a) again provides that any issue not raised below may be raised considered on appeal. Parenthetically, both court rules are also relaxable , under the New Jersey Supreme Court's Rule 1:1-2 (6a). Essentially , New Jersey takes a liberal approach to raising matters in its Supreme and Superior Courts.

Petitioner's appellate brief (A-2206-96T5) argued 6 constitutional points (at p "I"):

I. ORDERING VIOLATION OF A CONSENT DECREE BY WAY OF INJUNCTION IS FLAGRANTLY UNCONSTITUTIONAL.

II. IMPOSING CONTRACT TERMS CONTRAVENES FUNDAMENTAL CONSTITUTIONAL, GUARANTEES.

III. APPOINTING AN AGENT FOR ANOTHER PARTY IS UNCONSTITUTIONAL.

IV. GRANTING A NON-LICENSEE DOMINION OVER A LIQUOR LICENSE VIOLATES CONSTITUTIONAL SEPARATION OF POWERS.

V. ADJUDICATING INTERESTS, RIGHTS WITHOUT NOTICE TO A PARTY OF INTEREST IS UNCONSTITUTIONAL TO BOTH THAT PARTY AND TO THOSE SHARING COEXTENSIVE INTERESTS.

VI. APPROVING SALE OF ESTATE PROPERTY WITHOUT ORDERING A LAWFUL ESTATE ACCOUNTING CONTRAVENES CONSTITUTIONAL DUTY.

Arguments were presented between pages 3 and 7.. The record is specifically recited as follows: POINT I. "litigation was settled by way of consenting compromise. The settlement was embodied into an enforceable court order which created mutually binding obligations, rights for all parties. The rights could be termed as "vested", "property" under both the Fourteenth Amendment and Article I Para 1 of the New Jersey Constitution. Longstanding public policy of this State has been to enforce settlement agreements: (binding New Jersey cites). POINT II. Two contracts are subjects at hand: the actual consent decree was a contract to settle litigation. the proposed sales agreement is also contractual in nature. As previously cited, the rights created by consent decree are basic civil rights: Lynch v. Household Finance Corp. 504 U.S. 538 (1972) and Penna Greyhound Lines v. Rosenthall 14 N.J. 372 (1954 (Penna relied upon , cited Fourteenth Amendment guarantees).Point III. The Lower Court's appointment of Ronald Sutton to act as my agent on my behalf is clearly, flagrantly unconstitutional and should only be construed as a brazen disregard of fundamental rights: Palko v State of Conn. 302 U.S. 319 (1937) (a supporting New Jersey cites followed). POINT IV: In good faith, the Separation of Powers argument was to provisions to the New Jersey Constitution, although it was not cited.

POINT V: No specific constitutional cites were presented, only a general reference: While appellant may not act in Loretta's behalf, her interests are clearly intertwined and as such a demand can be made for her to have representation, by a disinterested party, for mutual protection of all parties to this litigation. That the court ruled to the contrary deprives me of due process guarantees. POINT VI. argued the duty of the Judiciary to effect a lawful estate accounting being resisted by the co-executors. The duty was cited under the New Jersey Constitution and also the Code of Judicial Conduct. No U.S. Cites were presented.

During appeal pendency , lower probate court entered a satisfaction, release order ,without jurisdiction (2a). Petitioner filed a proper motion to the jurisdictional appellate court to order the lower court to vacate its order entered without jurisdiction and also settling claims without consent of appellant. Three points were argued in support of said motion:

I. THIS COURT SHOULD DIRECT THAT THE LOWER COURT VACATE VOID ORDER OF MAY 16, 1997.
II. THE LOWER COURT SHOULD BE DIRECTED TO VACATE ITS ORDER OF MAY 16, 1997 AS BEING BROADLY UNCONSTITUTIONAL.
III. THE LOWER COURT SHOULD BE DIRECTED TO VACATE ITS ORDER PF ,AY 16, 1997 FOR VIOLATING NEW JERSEYS' "FUNDAMENTAL FAIRNESS DOCTRINE".

Points were presented at page "I" . Legal arguments were between pages 2 and 4 of said moving papers. POINT II.: Settling claims, determining amount of settlement sums and releasing parties from liability are well recognized personal rights whose exercise is constitutionally protected. Once again, this lower court has violated fundamental liberty to contract through its settlement impositions. Additionally, the lower court has clearly abused its power in a shocking indifference to well recognized constitutional rights, guarantees, as cited, defined by : Fagan v City of Vineland 22 F3d 1296 (CA3 1994), Felder v. Stonack 141 N.J. 101 (1995), and Rivkin v. Dover tp Rent Leveling Bd. 143 N.J. 352 (1996). All cites presented federal law. Additionally, Rivkin is New Jersey's landmark Section 1983 case.

POINT III. : Appellant had a reasonable expectation to be treated fairly by the lower court which may also be construed as expecting courts to abide by binding case law and also by well-known, recognized constitutional guarantees. The lower court's settlement imposition clearly violated our "Fundamental Fairness Doctrine." (The three state cases that were cited discussed New Jersey's Doctrine with each cite indicating that the source was federal law, U.S. constitutional guarantees.) . As post-deprivation remedy, this Panel should direct the lower Court to vacate its order to provide appellant "with a clear and certain remedy by preventing and unlawful deprivation": McKesson v. Div. of Alcoholic Beverages 496 U.S. 18 (1990) .

Prior to filing an appeal, petitioner first alerted the New Jersey Supreme Court to federal claims, issues ; by filing a Motion for direct certification , under Docket No. 71383. Those moving papers summarized petitioner's argument by stating " While departure from precedent is grounds for granting certification, the lower court is clearly, flagrantly violating Fourteenth Amendment guarantees through colorable deprivation in concert with private parties which should further generate this Court' supervisory exercise" (Moving papers, at page 8).

The entire record, filings below were before the New Jersey Supreme Court under Docket 45, 520. Petition for Certification presented several federal claims. There also exists constitutionally protected "vested rights".....contract rights under consent decree. ...and property ownership rights.....and also again, liberty to create agency and to release for injury under Article I of the New Jersey Consitution and under the Fourteenth Amendment..... Appointment of an agent and releasing for injury are "fundamental" rights guaranteed under the Fourteenth Amendment: Alexander v. Whitman 114 F3d 1392 (CA3 1997)..... Releasing for any and all claims is an outrage and squarely applies.....the standards for damages under 42 U.S.C.A. 1983 under this Court's RIVKIN. (Petition at page 6). Fundamental due process guarantees of notice and a fair hearing were not present for Loretta Sutton, who was not represented owing to Ronald Suttons' breaching of his fiduciary duties to her. (Petition at page 7). A certification grant would appear to be in accord with, or warranted under this Court's holding in: RIVKIN respecting post-deprivation remedies (Petition at page 8).

The acquisition, possession and protection of property, as being a constitutionally protected inalienable right, were also cited, reiterated in : In RE Con Granted To The Harborage 300 N.J. Super 363 (App Div 1997); yet were ignored for petitioner. The discrimination against the petitioner, for whatever reason, is quite apparent as in: Maiorino v Schering-Plough Corp 302 N.J. Super 323 (App Div 1997). (All New Jersey cites relied upon and referenced U.S. Constitutional guarantees as indicated by citing U.S. Supreme Court cases) (Petition, at page 10).

It may further aid this Court's resolution of federal jurisdiction to appreciate that petitioner's "Fundamental Fairness Doctrine" cite was supported by an extensive treatement of U.S. Constitutional guarantees within : Doe v. Poritz 142 N.J. 1 (1995) ,"Equal Protection" (page 91); " Procedural Due Process and Fairness and Rightness" (page 99). Chief Justice Poritz (App, 4a) was then New Jersey Attorney General.

A review of appellate and New Jersey Supreme Court orders indicates that all federal issues, claims were ignored or evaded; as was New Jersey Law; yet, all were presented forthrightly and accurately. State courts never questioned the claims; nor did the opposition ever challenge any.

REASONS FOR GRANTING THE PETITION

I. Action, inaction of State Courts is flagrantly unconstitutional, very wrong.

Although captioned as a "civil action", make no mistake that colorable theft of property is criminal, 18 U.S.C.A. 242, U.S. v. Lanier 117 S.Ct. 1219 (1997) with more than "fair warning" and as being vehicled through a Palko "sham" 302 U.S. 319 (1937) at 327-328. Rights asserted were established, fundamental ; constitutionally guaranteed. They were not those of the IX Amendment. Obligations of state courts to enforce federal rights, law are unavoidable under the U.S. Constitution: Article VI, Clause 2 and the Fourteenth Amendment.

Quite some time ago, this Court ruled that "contracts for settlement... will be protected, enforced": May v Le Claire 78 U.S. 217 (1870). Longstanding, declared public policy of this State has also been to the settlement of litigation; yet, this policy is unenforceable. Those who settle litigation find down the road that those agreements are worthless and that resort to state courts is nothing more than a trap, property and rights deprivation vehicle.

Make no mistake , again, that state courts display brazen contempt for personal and property rights; guaranteed through the Fourteenth Amendment. The "full and Fair opportunity to litigate" is clearly absent Kremer v Chemical Construction Corp 456 U.S. 461 (1982) 480-486; however, "bad faith" is present Judice v Vail 430 U.S. 327 (1977) dissenting opinions 341-348.

While applied to lower Federal Courts, the same principles of Younger v Harris 401 U.S. 37 (1971) and Huffman v Pursue 420 U.S. (1975) should apply to the granting of this petition.

II. Questions presented are of public importance.

(a). Axiomatically, State and Federal Courts have experienced a litigation explosion. Digressively, civil resolution of claims, disputes is highly desireable, to be encouraged; whether between individuals or class actions: Matsushita Electric Indus. Co. v. Epstein 116 S. Ct. 873(1996) 878-879. Respect for, and confidence in, State and Federal Courts would be significantly dimished if an exercise of their jurisdiction resulted in prejudicial treatment. A reason for granting petition flows out of the declared public policy of this Court, respecting the unwillingness of State Courts to enforce constitutional guarantees: Monroe v Pape 365 U.S. 167 (1961) 175-179. Circumstances in the New Jersey Courts are much akin to those existing in the post-civil war South.

(b), The New Jersey Supreme Court has acted in bad faith by denying discretionary review. The denial commutes to "Law of the Case" , precluding further litigation which is, in effect, in conflict with their Rivkin v Dover Tp. 143 N.J. 352 (1996) indicating that a 1983 remedy would not be available if the State provided post-deprivation remedy. If the Court were acting in good faith, then they would have granted review and remedy under State law. It would be ludicrous to believe that a federal 1983 cause of action could now be initiated in a State Court. "Law of the Case" and prejudice would preclude the same; essentially, a trap!

While the actual 1988 Consent Decree is a valid judgment, subsequent events (unenforceability) seem to indicate that the decree has not been given "Full Faith and Credit " by its own Courts; hence, the issue commutes to federal subject matter jurisdiction. Under Title 28 U.S.C.A. 1738, lack of enforcement should not commute to a subject matter barrier : Johnson v. De Grandy 114 S. Ct. 2647 (1994) 2654. This position would seem to be in accord with : Marrese v American Ac. of Orthopedaedic Surg. 470 U.S. 373(1985) 380, respecting "comity". Its a two way street!

The two prior issues should be addressed, as they both commute to federal jurisdiction and also federal law, both publically important. A grant of petition , herein, would further appear to be in accord with with New Jersey's Rivkin, respecting post-deprivation remedy.

(c). Under New Jersey Law, the filing of a Notice of Appeal is a jurisdictional event, depriving the lower of authority to act further in the matter: Appellate Rule 2:9-1(a) and Manalpan Realty v Tp. comtte 140 N.J. 366 (1995) (App 7a). As previously indicated, the federal unconstitutionality of court imposed release ,settlement was presented to both the Appellate Division and also the New Jersey Supreme Court. Entering an order without jurisdiction defies Fourteenth Amendment guarantees of due process. While the New Jersey Courts gave said order "full Faith and Credit" , it is clearly in derogation of their own Law ; essentially again, due process. Although Kremer v. Chemical Const. Corp. 456 U.S. 461 (1982) does indicate that state law determines preclusion in federal court, A Kremer refinement presumes due process judgments.

While the Appellate , Law and Chancery Courts comprise the same Division, Article VI, Section III, Part 2 (6a); New Jersey Court Rule 2:9-1(a) and supporting Case Law distinguish jurisdiction of the Appellate Division upon filing Notice of Appeal. In a similar manner, the grant of a Petition for Certification to the New Jersey Supreme Court would deprive any court below of authority to act further, again a jurisdictional event.

Under New Jersey Law, lack of jurisdiction cummutes to void judgments. Coextensively, lack of jurisdiction commutes to loss of judicial immunity. Under New Jersey law, an excess of jurisdiction would stem from issuance of orders between the civil and criminal parts of the Law Division ; or that of a court of limited jurisdiction entering orders in excess of its jurisdiction (Small Claims hearing matters in excess of its $2000.00 limit).

Just as jurisdiction, state and federal court relations are of public concern; so is an issue of judicial immunity.

(d). Concurrent with issues of "Full Faith and Credit", Jurisdiction, and Judicial Immunity; there would appear to be further grant impetus from the Fourteenth Amendment and also Title 42 U.S.C.A. 1983 as each addresses remedies, guarantees to all citizens and "any person" From time-to-time, it is apparent that this Court would be required to act for the "person"; especially when individual issues are intertwined with public issues.

CONCLUSION

The petition for writ of certiorari should be granted

Very respectfully submitted,

~~Rey~~ F. Sutton
210 E. Upland Ave.
Galloway Twp., N.J. 08201
609 652 8313

In the Matter of the Estate Of Roy C. Sutton, Deceased	* Superior Court of New Jersey * Atlantic County * * Docket No. 71383 * * Civil Action * * ORDER *

This matter being opened to the Court by the law firm of Goldenberg Mackler & Sayegh, attorneys for Ronald Sutton and Loretta Sutton, individually and as co-executors of the Estate of Roy C. Sutton, and due notice having been given appropriately, and for good cause shown:

It is on thes 27th day of September, 1996 ordered and adjudged as follows:

1. The terms and conditions of the August 8, 1996 agreement of sale as relates to certain real estate and the shares of Carolina Liquor Corp. are hereby approved.

2. Roy Sutton is hereby mandatorily enjoined and restrained to execute the August 8, 1996 agreement of sale together with any and all documents necessary or appropriate to effectuate the intent and purposes of the August 8, 1996 agreement of sale, including, but not limited to any and all paperwork necessary to be filled with the Alcoholic Beverage Control and/or with the Department of Environmental Protection.

3. In the event Roy Sutton refuses to honor paragraph 2 of this order, then Ronald Sutton is hereby granted permission, by and on behalf of Roy Sutton, to execute any and all documents necessary or appropateto effectuate the intent and purposes of the Aughtust 8, 1996 Agreement of Sale including, but not limited to, any and all papers necessary to be filed with the Alcoholic Beverage Control and/or with the Department of Environmental Protection.

/s/ J.G. Himmelberger ,J.S.C.

In The Matter of the Estate of Roy C. Sutton, Deceased	* Superior Court of New Jersey * Chancery Division/Probate Part * Atlantic County * * Civil Action * * ORDER

This matter being opened to the Court by the law firm of Goldenberg Mackler & Sayegh, upon due notice to all parties hereto, and for good cause shown:

It is on this 16th day of May 1997 ordered and adjudged as follows:

1. Any and all disbursements and payments as outlianed in Exhibit 6 & 7 attached to the underlying supporting certification of Frederic Shenkman, Esquire are hereby approved; and

2. Payment is hereby authorized to Roy Sutton in the amount of $23,475.70 in complete satisfaction of any and all claims Roy Sutton has arising out of and/or relating to the agreement of sale dated August 8, 1996 by and between Ronald Sutton, Robert Sutton, Roy Sutton, Doreen McNeil, Bernadette Foley, Patricia Sutton, Loretta Sutton, on one hand, and Ronald J. Fogel, Sr. and Joyce Fogel, on the other hand, and any amendments thereto.

/s/ J.G. Himmelberger, J.S.C.

In The Matter Of The Estate of Roy C. Sutton ,Deceased	*	Superior Court of New Jersey
	*	Appellate Division
	*	Docket No. A-2206-96T3

Submitted January 14, 1998--Decided Jan 23, 1998
Before Judges Muir, Jr., and Kestin.
On appeal from the Superior Court of New Jersey, Chancery Division, Probate Part, Atlantic County.
Per Curiam

Roy F. Sutton, a son of decedent Roy C. Sutton, appeals from an order approving the sale of real estate and stock in a licensed liquor corporation which were assets of decedent's estate. The order directed Roy f. Sutton to execute all documents required to effectuate the sale and, in the event he refused, authorized another son to execute the documents on Roy F. Sutton's behalf.

We find the appeal to be clearly without merit and affirm. See R. 2:11-3(e)(1)(E).

Affirmed.

In The Matter of The Estate Of Roy C. Sutton	*	Supreme Court of New Jersey
	*	C-908 September Term 1997
	*	45,520
(Roy F Sutton-Petitioner)	*	On Petition For Certification

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-2206-96 having been submitted to this Court, and the Court having considered the same;

It is ordered that the petition for certification is denied, with costs.

Witness, the Honorable Deborah T. Poritz, Chief Justice, at Trenton, this 24th day of March , 1998.

filed March 25, 1998 /s/ Stephen Townsend,
Clerk of the Supreme Court

STATUTORY PROVISIONS INVOLVED

U.S. Constitution:

Article VI, Clause 2: This Constitution and the laws of the United States, which shall be made in pursuance thereof; and all the Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Amendment IX: The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Amendment XIV, Section 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; no shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the Laws.

United States Code

18 U.S.C.A. 242: (pertinent part) , Whosoever , under color of any Law, Statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth possession or District to the deprivation of any rights, privileges, or immunities secured or protected by th Constitution or Laws of the United States,..... shall be fined under this title or imprisoned not more than one year, or both....

28 U.S.C.A. 1738, Paragraph 3: Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories annd Possessions as they have by law or usuage in the courts of such State, Territory or Possession from which they are taken.

42 U.S.C.A. 1983: Every person who, under color of any statute, ordinance, regulation, custom, or usuage of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdictiontherof to the deprivation of any rights, privileges, or immunities secured by the Constitution and Laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

New Jersey Constitution

Article VI, Section III, Part 2; The Superior Court shall have original general jurisdiction throughout the State in all causes.

Article VI, Section III, Part 3; The Superior Court shall be divided into an Appellate Division, a Law Division, and a Chancery Division, which shall include a family part. Each Division shall have such other parts, consist of such number of judges, and hear such causes, as may be provided by rules of the Supreme Court.....(pertinent part).

Article VI, Section V, Part 3; The Supreme Court and the Appellate Division of the Superior Court may exercise such original jurisdiction as may be necessary to the complete determination of any cause on review.

New Jersey Court Rules

Rule 1:1-2, Construction and Relaxation: The rules in Part I through Part VII, inclusive, shall be construed to secure a just determination, simplicity in procedure, fairness in administration and the elemination of justifiable expense and delay. Unless otherwise stated, any rule may be relaxed or dispensed with by the court in which the action is pending if adherence to it would result in an injustice. In the absence of rule, the court may proceed in any manner compatible with these purposes.

Rule 2:6-2. Contents of Appellant's Brief; Comments: "Nevertheless an issue not raised below may be considered by the court if it meets the plain error standard or is otherwise of special significance to the litigant, to the public or to the achieving of substantial justice"

Rule 2:9-1(a) Control by Appellate Court of Proceedings Pending Appeal or Certification.
(a) Control prior to Appellate Dispostion. Except as otherwise provided.....The supervision and control of the proceedings on appeal or certification shall be in the appellate court from the time the appeal is taken or the notice of petition for certification filed. The trial court, however, shall have continuing jurisdiction to enforce judgments and orders pursuant to R. 1:10 and as otherwise provided. The appellate court may at any time entertaina motion for directions to the court or courts or agencies below or to modify or vacate any order made by such courts or agencies or by any judge below.
Comments: "Except to the extent of enforcement and except as otherwise expressly provided for by rule, the ordinary effect of the filing of the notice of appeal is to deprive the court below of jurisdiction to act further in the matter unless directed to do so by the appellate court."

Rule 2:10-5 Original Jurisdiction; The appellate court may exercise such original jurisdiction as is necessary to the complete determination of any matter on review.